DOCUMENT RESUME

ED 261 446 CS 505 064

AUTHOR Bowen, Richard D.
TITLE Liability Issues Facing the Extracurricular Coach.
PUB DATE Aug 85
NOTE 74p.; Requirement for the Specialist in Education degree, Central Michigan University.
PUB TYPE Reports - Research/Technical (143) -- Dissertations/Theses - Undetermined (040)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Boards of Education; *Educational Research; *Extracurricular Activities; High Schools; *Legal Responsibility; *Planning; Principals; *School Policy; School Responsibility; School Surveys; *Speech Communication; State Standards; Student Behavior

ABSTRACT

A questionnaire was mailed to 100 high school principals in Michigan in order to determine their strategic planning of administrative policies governing extracurricular speech activities. The survey questions were limited to 10 major items covering six key liability issues: (1) compatibility of school policies with state association rules and regulations, (2) administrative policies, (3) coach supervision of students at variance, (4) vehicle usage and maintenance, (5) annual revision of liability policies, and (6) medical care and planning. Several conclusions were drawn from the results received. First of all, the school board should both adopt state high school activity association rules and regulations and be sure that school policies are compatible with the state association to assure that a clearcut policy amply supervises student behavior. Second, administrative liability planning needs to be comprehensive, consistent, and strategically planned as an annual collaborative effort by both administrator and coach. Third, most supervision by the coach is supervision at variance, and parents must be so notified. Finally, administrators need to discuss annually with the forensics director how administrative policies, supervision, vehicle usage, medical planning, and other issues are interrelated to liability concerns for the purpose of strategic planning of policies. (HOD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Richard D. Bowen
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED261446

LIABILITY ISSUES FACING THE EXTRACURRICULAR COACH

Richard D. Bowen

A thesis submitted in partial fulfillment of
the requirement for the degree of
Specialist in Education

Department of Counseling, Educational Administration
and Community Leadership

Central Michigan University
Mount Pleasant, Michigan
August 1985

BEST COPY AVAILABLE

CS505064

ACKNOWLEDGMENT

The completion of this study depends on the assistance and cooperation of many persons The author wishes to express special thanks to the following: Don Boileau, Ph.D., Director of Educational Research, Speech Communication Association, for spontaneously initiating the study design and providing liaison support with the NASSP; Jon Fitzgerald, Executive Director, Michigan Interscholastic Forensic Association, for his long leadership addressing speech liability issues; members, the Michigan Association of Speech Communication, who have maintained involvement in both legal and educational issues affecting the speech educator; Donald O. Bush, Ed.D., and Roger J. Goenner, Ed.D., thesis committee members, for their professional contributions; and to 1985 members of the Administrative Action Series, who provided research data that parallels the results of this study. Finally, and most importantly, deep appreciation is expressed to Robert C. Mills, Ph.D., thesis advisor, who provided so tirelessly both guidance and encouragement.

Richard D. Bowen

ABSTRACT

LIABILITY ISSUES FACING THE EXTRACURRICULAR COACH

by Richard D. Bowen

This study addresses many fundamental liability issues confronting the extracurricular forensics (speech) coach. The study reviews liability statutes and court cases which necessitate consistent, comprehensive administrative planning of liability policies. A survey questionnaire was mailed to 100 Michigan high school principals who supervise forensic (speech) programs. Data was analyzed and interpreted from the 50 respondent questionnaires.

Conclusions drawn from the study's legal review and survey data follow:

1. school liability policies lack consistency and comprehensiveness;
2. school boards and administrators do not effectively address extracurricular liability issues when assessing policy;
3. fundamental liability issues continue to threaten the administrator and the forensics director/coach.

Recommendation is made that the administration and coach collaborate to create consistent, comprehensive liability policies governing extracurricular activities.

TABLE OF CONTENTS

Chapter		Page
I.	INTRODUCTION	1
	Statement of the Problem	3
	School and State Association Control of Participants and Activities	3
	Purpose of the Study	10
II.	REVIEW OF THE RELATED LITERATURE	12
	The Scope of Governmental School Control	12
	State Associations	15
	Administrative Strategic Planning	20
	Supervision	21
	Liability	27
	Vehicle Usage and Maintenance	37
	Summary	38
III.	METHODOLOGY	39
	Survey	39
	Survey Sample	39
	The Survey Instrument	40
	Survey Distribution	41
	Summary	42
IV.	PRESENTATION OF DATA AND INTERPRETATION OF RESULTS	43

Chapter Page

State Associations 44
Administrative Policies 46
Supervision at Variance 48
Vehicle Usage and Maintenance 50
Liability Addressed 52
Medical Care and Planning 55

V. CONCLUSIONS AND RECOMMENDATIONS 58

Conclusions 58
Recommendations 60

SELECTED REFERENCES 61

APPENDICES 64

Appendix A: Letter 64
Appendix B: Ten Question Liability Survey of Michigan School Administrators 66

LIST OF TABLES

Table		Page
1.	Support of State Associations	44
2.	Administrative Policies in Extracurricular Activities	47
3.	Supervision at Variance	49
4.	Vehicle Usage and Maintenance	51
5.	Administrators Discussing Liability	54
6.	Medical Care and Planning	56

CHAPTER I

INTRODUCTION

The National Association of Secondary School Principals (NASSP) in John L. Strope, Jr.'s 1984 monograph SCHOOL ACTIVITIES AND THE LAW states:[1]

> Since many of the issues centered on school attendance have been resolved in the 1980s, the courts and school boards are witnessing more questions about the extent of a school's authority to regulate student participation in cocurricular activities.

As a coach/forensics director for many years, there was no doubt that the coach assumed all the responsibilities and all of the liabilities without much guidance from the administration. Trust is commendable, but leadership providing clear guidelines and written rules and regulations governing extracurricular activities would be appreciated.

Strategic planning is the central focus for the entire program administrated by the forensics director, but even the best coach cannot coordinate an entire school policy

---

[1]John L. Strope, Jr., "Forward by Ivan Gluckman," School Activities and the Law (Reston, Va.: NASSP, 1984), p. vii.

governing extracurricular activities; the person lacks the authority and power. Building administrators and school boards need to participate in the school district strategic liability planning necessary to help protect the coach who places his proverbial neck on the firing line every day.

Lack of support for the forensics director in the past may have been the product of oversight and ignorance. Presently, it is clear that the forensics director has the right to submit, in writing, a request for active participation in the strategic liability planning by the building administrator and the school board. Should the school administration elect to take no action, that action may constitute a direct liability should accident or injury occur. The NASSP tells us that the old adage "Wait until something happens" is an ignorant action that will no longer be tolerated by parents, coaches or courts.

Many schools are now hiring nonfaculty/staff for coaching extracurricular activities, making the need for careful planning even more apparent for the circumspect administrator; the liability will clearly fall to some large extent upon the administrator in charge of this school nonmember who is directing a program.

Statement of the Problem

School and State Association Control of Participants and Activities

Educators have supported student activities as part of a total school offering for many years; for more than 50 years courts have agreed to support educators.[2] There are useful and wholesome preventive measures which save children from delinquency and the estate from additional expense in connection with penal institutions.[3]

Today's courts have said that these activities are "an integral and complimentary part of the total school program."[4]

School control of these activities is extensive. The Supreme Court said:[5]

> By and large public education in our nation is committed to control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems...

---

[2]Strope, Jr.

[3]Beard v. Board of Education, 16 P.2d 900 (Utah 1932).

[4]Wood v. Strickland, 420 U.S. 308 (1975); Zeller v. Donegal Sch. Dist., 517 F2d 600 (3rd Cir. 1975); Kernstein v. Pewaukee Sch. Bd., 557 F. Supp. 565 (E.D. Wis 1983).

[5]Epperson v. Arkansas, 393 U.S. 97 (1978).

Courts have extended the school's autonomy to apply in the area of student activities. Both federal and state courts reiterate their belief that control of activities and participants in activities are to be left to the discretion of both local school officials and the state activity association.[6] This discretion has been held to even supercede parent wishes.[7] The control provided these bodies is extensive.[8]

> Although this ruling may not hold up today, the message is still strong. If an activity is related to the welfare of the school, when or where the activity is held will not likely diminish the authority of principals over student participants.

With school and state associations exercising such extensive control, the responsibilities are burdens progressively increased in this tortious society.

> Legal challenges to school decisions affecting student participation in cocurricular activities relate to the application of rules against the use of alcoholic beverages or other drugs usage.[9]

---

[6]Oklahoma High Sch. Ath. Ass'n. v. Bray, 321 F.2d 269 (10th Cir. 1963).

[7]Cordova V. Chonka, 315 F. Supp. 953 (N.D. Ohio 1970).

[8]Strope, Jr., p. 4.

[9]Strope, Jr., p. 25.

Suits challenging school decisions are predictable when considering the number of coaches and student participants in extracurricular activities. The coach facing both the brunt of the suit in the courts and the media focus in the community does not handle the situation more easily by knowing that such action was predictable; what makes it worse is if the action was preventable by some strategic planning.

In addition to establishing and enforcing administrative policies and procedures, the coach has, by the close relationship occurring between teacher/coach and student, become legally responsible for injuries incurred.

The courts have, on an individual case basis, assigned clear legal duty for certain injuries. The relationship necessarily created between coach/teacher and student establishes a legal duty for the student's welfare.[10]

Usually, the negligence was neither intentional nor were there unusual circumstances leading to injury. A litigious society, however, finds teachers, coaches and schools highly responsible for planned supervision and parents are often willing to sue when injury occurs. Often

---

[10]Strope, Jr., p. 43.

the coach and/or his/her principal is placed on the firing line as an individual.

Courts generally support school decisions and actions, but such freedom must be firmly and fairly administered.[11]

Liability cases have suggested that the education professional's character and tolerance must be evidenced by strategically developed, clear procedural policies for the extracurricular programs that are fairly administered.

To ignore the court's expectations for careful planning and fair administration can often incur costly litigation. Interestingly enough, usually the school loses in the local court but wins on appeal; that's small consolation for the emotional trauma, lost time and court costs suffered by teacher/coach, administrators and board members who must operate professionally in the school community.

Every extracurricular and cocurricular activity has both unique and common representational problems inherent in the activity. Focus is placed on the extra/cocurricular speech activities due to twelve year's experience as forensics director/coach. During both the school year and

---

[11]Passel v. Forth Worth Indep. Sch. Dist., 453 S.W.2d 888, 892 (Tex. Civ. App. 1970).

the summer hundreds of speech coaches, like many other coaches, face daily a myriad of liability issues while making decision though we all may be unaware at times of the ramifications.

Speech activities are usually governed by a state association, i.e., The Michigan Interscholastic Forensic Association, with member schools participating in the following activities: student congress, debate, 12 individual speaking events, one-act play festivals, and discussion.

Supervision by the coach(es) is usually at variance; the coach registers and judges in one location while students disperse throughout building(s) to participate/compete. The sites may be metropolitan hotels, college campuses, resorts, schools or any other large facility. A tournament director is available at headquarters and other school's coaches are on the premises, but your coach generally isn't.

Coaches also usually drive to and from the site, which means the coach goes nonstop from early morning until at night when the last student climbs out of the vehicle. Truck drivers are forced to stop for rest at specific mile or hour intervals; the coach keeps up the pace. Liability issues are compounded exponentially.

While on the road or at the competitive site, administrative concerns are experienced: medical emergencies, illness, and various disciplinary actions. Overnight stays exacerbate the problem. Clear, responsible planning is a product of judicious coaching. Too many coaches have walked hallways until 3 a.m. to govern student areas while ignorant coaches slept. Whether staff/faculty or a non-faculty member, there is need for clear administrative education and strategic planning governing the expectations for behavior.

The same school handbook that delineates clearly the student behavior expected on the school site rarely addresses with similar care the student behavior expected while participating in an extracurricular activity. Since the extracurricular activity is clearly part of the educational process and considered part of the school curriculum, the school cannot ignore the inherent responsibility. To argue that this is the coach's responsibility means no handbook should exist, since the rest is the responsibility of the classroom teacher. The handbook, circulated among staff, students and parents, places the accountability and awareness squarely upon those who are responsible.

The National Association of Secondary School Principals (NASSP) monograph SCHOOL ACTIVITIES AND THE LAW makes several specific recommendations to avoid successful litigation against the school, including:[12]

1. Pay attention to situations that could lead to injury. Clearcut strategic planning is necessary to avoid the forseeable.

2. Adopt and constantly publicize system, school, departmental and classroom rules. Do this to and for students. Do this to and for staff.

3. Document what was said when safety instructions are given, when it was said, to whom it was said, and what was done to assure understanding and compliance.

4. Take extra precautions for off-campus activities The greater the risk, the greater the planning required. Permission slips only communicate a quality of planning to the parent; no legal liability is relieved. Determine if volunteer drivers are covered by school insurance.

5. Secure liability insurance for school and coach.

The NASSP has designated 1985 the year to address extracurricular activity liability because suits are likely to increase. The NASSP urges the following: greater knowledge; cooperative, strategic liability policy planning; published policies; and liability insurance protection of administrator and coach.

---

[12]Strope, Jr., pp. 50-51.

Make 1985 the year for administrators and coaches to aggressively and strategically plan the best means to address liability issues. No coach should venture again as coach without the full participation and support necessary by the school board and school administrator.

Purpose of the Study

The purpose of the study was to determine the high school principal's strategic planning for handling extra-curricular liability issues, both on campus and off-site. Strategic liability planning includes revision of school policies, procedures and liability concerns with joint cooperation of forensic directors who supervise extra-curricular speech activities.

Strategic liability planning must determine how extra-curricular school policies are incorporated into the following areas: compatible adoption of state association rules and regulations; supervision at variance; vehicle usage and maintenance; medical care and planning; liability insurance; student handbook; and annual review and revision of liability policies.

The survey is limited to 100 school principals throughout the state who have speech activity programs. The most

difficult accomplishment in any state liability survey was to find a representational sample. The problem was to select a small number of schools who accurately represent Michigan schools in size, geographical location and participation in speech activities. The time for the liability survey was limited to February and March, 1985.

CHAPTER II

REVIEW OF THE RELATED LITERATURE

If any legal topic seems especially difficult to understand, it is tort-law--that area of law that involves personal injuries. Unfortunately, nothing can prevent successful tort suits against institutions and employees, partly because this area of the law is intentionally open-ended to provide injured persons an opportunity to develop new theories by which to seek compensation for their injuries.[13]

While knowledge of the current rules will not necessarily prevent a suit from being filed, such knowledge can be used to diminish the likelihood of successful suits.

The Scope of Governmental Schcol Control

Cocurricular and extracurricular activities have been part of the school setting for many years, and today's courts reiterate that these activities are "an integral and complimentary part of the total school program."[14] Control

---

[13]Strope, Jr., p. 38.

[14]Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972); Cape v. Tennessee Sec. Sch. Ath. Assn'n, 424 F. Supp. 732 (E.D. Tenn. 1976); Dunham v. Pulsifer, 312 F. Supp. 411 (D. Vt. 1970).

of these activities have been placed squarely in the hands of the school. As the Supreme Court stated:[15]

> By and large public education in our nation is committed to control by state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems....

Courts have extended the general rule of local control to apply to student activities.[16] Local school control powers are similarly extended to the decisions of state athletic and activity associations.[17] These discretionary powers have been held to even supersede the wishes of parents.[18] Messages from the courts provide strong support for the scope of school control of student behavior.[19]

> If an activity is related to the welfare of the school, when or where the activity is held will not likely diminish the authority of principals over student participants.

---

[15]Epperson v. Arkansas, 393 U.S. 97 (1968).

[16]Wood v. Strickland, 420 U.S. 308 (1975); Zeller v. Donegal Sch. Dist., 517 F2d 600 (3rd Cir. 1975); Kernstein v. Pewaukee Sch. Bd., 557 F. Supp. 565 (E.D. Wis. 1983).

[17]Oklahoma High Sch. Ath. Ass'n. v. Bray, 321 F.2d 269 (10th Cir. 1963).

[18]Cordova v. Chonko, 315 F. Supp. 953 (N.D. Ohio 1970).

[19]Strope, Jr., p. 4.

> More recently, a senior high school student was suspended from cocurricular activities for three days and not allowed to participate in the senior class trip because upon seeing one of his teachers at a local shopping center the student made a loud, derogatory remark about him. Though there was no express rule prohibiting such behavior, the federal court readily supported the principal's decision to punish the student for behavior detrimental to the school.[20]

In fact, the scope and discretion of the school is dominant, but not absolute. Generally courts are willing to intervene judicially into school decision making when a constitutional freedom is involved.[21] Such intervention can be clearly avoided by careful, strategic planning on the part of knowledgeable school administrators.

Due process, for example, does not possess the stringent legal requirements used to protect accused felons after the Miranda decision. A student may be expelled from an extra/cocurricular activity without denying the student his/her property right to education. Total exclusion requires

---

[20]Fenton v. Stear, 423 F. Supp. 767 (W.D. Pa. 1976).

[21]Braesch v. De Pasquale, 265 N.W.2d 842 (Nebr. 1978); Ector County Indep. Sch. Dist. v. Hopkins, 518 S.W.2d 576 (Tex. Civ. App. 1974); Chester M. Nolte, Judicial Intervention in School Athletics: The Changing Scene," 8 ELR 1983, p. 9.

thorough due process, but exclusion from an activity does, at best, require minimal due process.[22] Should the minimal due process be provided, courts are very nesitant to even become involved.

> While courts are not reluctant to (intervene).. when fundamental constitutional rights or tax funds are obviously involved, they are much less willing to enter typical disputes between students, teachers, and schools over school activity issues until all administrative remedies have been exhausted.[23]

Schools, then, will continue to enjoy minimal court involvement should knowledgeable administrators use some published strategic planning when dealing with student behavior during the administration of extracurricular activities.

State Associations

Like schools, state associations enjoy a broad scope of power.[24]

---

[22]Contra Duffley v. New Hampshire Interscholastic Ath. Ass'n., 446 A. 2d 462 (N.H. 1982); Strope, Jr., p. 6.

[23]Braesch v. De Pasquale, 265 N.W.2d 842 (Nebr. 1978); Ector County Indep. Sch. Dist. v. Hopkins, 518 S.W.2d 576 (Tex. Civ. App. 1974).

[24]Oklahoma High Sch. Ath. Ass'n. v. Bray, 321 F.2d 269 (10th Cir. 1963); Morrison v. Roberts, 82 P.2d 1023 (Okla. (1938); Albach v. Odle, 531 F.2d 983 (10th Cir. 1976).

> Athletic and activity associations enjoy similar freedom to control their own business. Courts have long recognized that voluntary associations should conduct their affairs as their members see fit without judicial interference.

State high school activity associations belong to a class known in the law as Associations and Clubs.[25] Typically, such an organization is a voluntary, state-wide corporation not for profit, having for its purpose the promotion and maintenance of wholesome amateur activities among its member schools. Membership in the association is on an institutional basis; there are no individual members.[26]

Generally, the association has both constitution and by-laws as well as rigorous rules and regulations.[27]

> The long accepted reason that courts hesitate to intervene...is that the constitution of the association is considered a contract between the members.

Sometimes, courts will intervene to review, if not reverse, the rules of decision of the association, but usually only if the case involves the school rather than

---

[25]Nolte, p. 2.

[26]Nolte.

[27]Nolte.

an individual.[28] The legal challenges focus on three questions.

1. Is the challenged rule or decision within the legal authority of the association?
2. Is the challenged rule or decision a reasonable exercise of that authority?
3. Is the rule fairly applied under the circumstances?

Like schools, state associations can control behavior that directly relates to the welfare and good order of the association. There is a constitutional command, however, that such exercise of powerful control not deprive a person of equal protection of the laws.[29]

Unless court decisions change, Michigan extracurricular participation in an activity is not a property right, so only minimal due process is required from both school and association when discipline is exacted. Also necessary for the association is to not withhold the information upon which the association has based its decision. Reasonable decisions and fair penalty for the infraction must have some record of procedural use of support for the decision rendered.

---

[28]Strope, Jr., p. 10.

[29]Strope, Jr., p. 11.

Within the association rules and regulations there needs to be included some procedural rules for many common issues, including: transfers, Title IX provisions for equal opportunity for boys and girls, inclusion of the handicapped, age/attendance requirements, and team and school penalties. Where the association takes a clear stand not contrary to constitutional rights, then courts have been reticent to intervene.[30] Updating of judicial rulings may require annual review of rules.

In addition, the courts have upheld the rights of associations to control off-campus involvement. Whether the student knew of the rule prior to the infraction did not appear to be a factor considered in court; the fact that the association had control was upheld.[31]

Association control extends not just during the season but even outside the school year. Associations have demonstrated a rational basis for rules of limitation, i.e., limiting the number of sportscamps a student can attend in the summer.[32]

---

[30]Strope, Jr., p. 21

[31]Strope, Jr., p. 23.

[32]Nolte, p. 3.

Not only must the association have a sound basis for making decisions, but they also must comply with the Open Meetings Act. As a public body, the meetings are open to the public.[33]

A case of equal protection being denied conveys the principle that associations must use clear criteria for assessing change.[34]

> A South Dakota school system sued the activities association because its policies discriminated against schools with small enrollment by allowing schools with the largest enrollments to have two chances to qualify for the national tournament of the National Forensic League. The federal court found an unlawful denial of the equal protection of the laws.[35]

Should a procedural irregularity exist or a constitutional right be denied, then the court reluctantly intervenes. Otherwise, the general rule is that a suit filed results in the association losing the trial and winning on appeal.[36]

---

[33]Spain v. Louisiana High Sch. Ath. Ass'n., 398 So.2d 1386 (La. 1981).

[34]Baltic Indep. Sch. Dist. v. South Dakota High Sch. Act. Ass'n., 362 F. Supp. 780 (D. S. Dak. 1973).

[35]Nolte, p. 8.

[36]Braesch v. De Pasquale, 265 N.W.2d 842 (Nebr. 1978); Ector County Indep. Sch. Dist. v. Hopkins, 518 S.W.2d 576 (Tex. Civ. App. 1974).

Administrative Strategic Planning

Though courts have been very reluctant to interfere with the policies and decisions of school officials, numerous challenges to school decisions affecting student participation in cocurricular activities have occurred. There are some key points gleaned from cases that should be considered by the administrator when planning school procedures.

Rules that exist with evidence that the students had prior knowledge of those rules have not hurt the school's case. Also, the rules are to be imposed with fair procedures used to arrive at judgments; the penalties are to fairly reflect the seriousness of the infraction. Even if the procedures were initially flawed, as long as there existed internal administrative remedies to be exercised, then the schools won their cases.[37] Of course, student admission of guilt helps the procedural concerns immeasurably.

Fairness appears to be a good philosophy to apply to any administrative approach.

> Bahlman v. Board of Education illustrates the belief that 'good administration makes good law.'[38]

---

[37] Buhlman v. Board of Educ., 436 N.Y. S.2d 192 (Sup. Ct. (1981)

[38] Biddle v Mazzacco, 324 P.2d 364, 366 (Alaska 1955).

Clear rules and procedures applied fairly with clear administrative remedies/appeals have caused courts to be reluctant to intervene.

Probably no protected property right under the provisions of the Fourteenth Amendment due process apply to cocurricular activities, but courts still appreciate minimal due process procedures. Such due process demonstrates the philosophy of administrative fairness.

When courts recognize that fairness has been applied to the situation, generally they find for the coach and school.

The scope of student control is unlimited unless a constitutional right has been abrogated. Students can be removed from an activity due to behavior as long as minimal due process is applied, even if the student is unaware of the rule or if the rule doesn't exist but the administrative action is taken for the welfare of the school. Unhappy parents and students have tried to alter the decisions but have failed.

Supervision

Supervision is very much the key for assuring that administrative rules are carried out and that students

comply with those regulations. What may be erroneous on the part of any administrator is the belief that the coach is in the immediate vicinity of the student, thus solving some of the administrative problems. Such perceived accountability on the part of the administrator for the coach is neither realistic nor accurate.

The old adage, "An ounce of prevention is a pound of cure," certainly applies to liability planning. Knowledge of the coach's role, the nature of the activity, and what can be anticipated is crucial for accurate strategic planning.

In addition to the administrator and coach having knowledge and planning well together, both must operate prudently. In fact, negligence occurs if the act is not that of a prudent person.

> Negligence may be defined as the doing of that thing which a reasonably prudent person would not have done, or the failure to do that thing which a reasonably prudent person would have done in like or similar circumstances; it is the failure to exercise that degree of care and prudence that reasonably prudent persons would have exercised in like or similar circumstances.[39]

---

[39]Strope, Jr., p. 39

Just as both rules and behavior of a principal are measured by the courts against the behavior "of a reasonable principal," the coach is similarly assessed according to the behavior of a "reasonable coach." Obviously, both the rules and supervision require prior strategic planning. As the NASSP states:[40]

> Prevention of successful negligence suits requires thoughtful cooperation of all those administering and conducting student activity programs.

One test for the reasonable-person standard is the foreseeability test. Though not always applied by courts, Judge Cardoza claimed in a famous negligance case,[41]

> They risk reasonably to be perceived defines the duty to be obeyed.

The specific injury that occurred need not be foreseeable, but only that risks generally were foreseeable. Such legal duty does not mean that the coach should anticipate or assume the burden for all possible harm.

When applying the foreseeability tests, another consideration made by the courts is the age, maturity and

---

[40]Palsgraf v. Long Island R.R. Co., 162 N.E. 99 (Ct. of App. of N.Y. 1928).

[41]Strope, Jr., p. 43.

presumed wisdom of the students supervised. Bright students are presumed to assume a great portion of the duty to foresee and avoid risks and injury. Somehow that needs to be communicated to students by administrator and coach when initiating supervision of students.

Granted, the teacher/coach, by the nature of the relationship with the students, assumes much of the legal duty; the hardest problem is identifying the nature and extent of the duty. Supervision at variance compounds the issue. Duty changes with the facts and circumstances. The key appears to be the risks foreseeable in a particular activity.[42]

Someone may go farther to argue that one of the reasons for the cooperative effort between administrator and coach in determining necessary strategic planning necessary is that sometimes, by the nature of the job's scope, the administrator has greater knowledge and therefore greater legal duty to foresee risks that the coach and students may encounter. The permission slip, for example, suggests a knowledgeable contract among school, teacher and parent.

---

[42]Strope, Jr., p. 50.

> The permissions slips do not automatically relieve educators of legal liability, but they do provide evidence of the quality of planning and of knowledge and consent by parents which may be valuable in defending against claims should injury occur.[43]

Legally, the courts cannot expect either the administrator or coach to be everywhere at all times; immediate, direct, proximate supervision is often impractical or impossible. Written rules and regulations clearly stated and published, therefore, become the part of strategic planning that extends the supervision by written expectations of behavior.

Direct intervention is necessary when any party knows that the written expectations are not being met. For example, athletic club hazing was forced off-campus, but coaches and administrators knew that such an action did not preclude hazing operations. Neither coach nor administrator took any additional actions to prevent the hazing, and they were found liable for the injuries that occurred, including the unforeseen death.

> Lack of supervision is a common demonstration of breach of duty in school activity cases.[44]

---

[43]Rupp v. Bryant, 417 So.2d 658 (Fla. 1982); De Gooyer v. Harkness, 13 N.W. 2d 572 (Minn. 1978).

[44]Strope, Jr., p. 45.

A teacher and six adults took 35 young children to the beach. Children posed for pictures on a large log, and the waves overturned the log, crushing the child. The teacher was found liable because the danger was foreseeable and the supervision not direct enough.[45]

In another case, two students brought their motorcycle for senior class picture-posing in the park. They injured a child, and the teacher was found liable for inadequate supervision. Prior planning wasn't an issue here, but administrative strategic planning could be preventive for many situations.

Clearly, if student meetings after school in a classroom require faculty supervision, then most definitely the nature of strategic planning and supervision expectations need to be clarified when activities are off-campus and/or are new experiences. Such an approach requires administrator/coach cooperation and adequate personnel for supervision.

Too often the expectations for supervision are unrealistic; a student too often doesn't require immediate supervision UNLESS something happens. For extracurricular

---

[45]Morris v. Douglas County Sch. Dist. 403 P.2d 775 (Oreg. 1965).

activities the demands placed on the coach for supervision should be assessed in relation to the coaching/judging demands created by the activity; additional coaches may be desired to meet supervision expectations placed by parents/administrators. Improper supervision, though, is only one major contributor to tort liability.

Liability

Tort law, an area of law that involves personal injuries, is essentially a result of judicial decisions--common law--rather than statutory or legislative law.[46]

> Tort law was developed to regulate the relations between two parties when one party claimed to have been injured as a result of the intentional or accidental action of the other party.[47]

The unintentional tort of negligence can be a real concern for the professional. Negligence is defined as

> the doing of that thing which a reasonable prudent person would not have done, or the failure to do that thing which a reasonably prudent person would have done in like or similar circumstances; it is the failure to exercise that degree of care and prudence that reasonably prudent persons would have exercised in like or similar circumstances.[48]

---

[46]Strope, Jr., p. 38.

[47]Strope, Jr., p. 39.

[48]Biddle v. Mazzacco, 324 P.2d 364, 366 (Alaska 1955).

There is no way to prevent a suit, but knowledge of current rules and law may prevent a successful suit. Preventions of successful negligence suits requires thoughtful cooperation of all those administering and conducting student activity programs.[49]

The courts, as stated earlier, determine the negligence of an individual by measuring the behavior against what a reasonable or prudent person would do. Only with strategic planning for an activity or event can suits be successfully fought; hindsight in a court of law results in personal and professional loss.

If the foreseeability test applies to the suit of negligence, it is presumable that foreseeability should be a test for strategic planning by all those administering and conducting student activity programs. Such planning can include capable students involved in the activity.

Before panic and fear spreads for those involved in activities, coaches need to know that under the traditional common law doctrine of governmental immunity there is some protection. Michigan's governmental immunity, though not strongly supported in the courts, is the rule that school

---

[49]Strope, Jr., p. 39.

districts, board members, administrators and employees are not liable for torts committed, right or wrong.[50] Of course that doesn't provide the protection like it first sounds, or the topic would not be discussed with any seriousness by coaches, administrators and judges in courts of law.

Governmental immunity does not protect individual board members, administrators or teacher/coaches from individual suits.[51] Since teachers are in direct contact with students and most closely connected with injuries, they are the ones who are often defendents. Because protection does not occur due to governmental immunity, the best defense is the offense of strategic planning.

Strategic planning includes the need to understand the nature of potential defenses for tort liability cases, since knowing the elements necessary for successfully proving negligent action can provide the impetus for clear policy to establish a successful defense.

All torts require the plaintiff to prove that certain legal requirements are present. Proving a claim of

---

[50]Detroit News, 1/23/85, p. 3-A; Grames v. King, 123 Mich. App. 573 (1983).

[51]Detroit News.

negligence requires proof of four elements: duty, breach of duty, proximate cause, and actual injuries.

A legal "duty" exists when one person's relationship to another is such that it places an obligation upon him to exercise at least ordinary care that the other person is not injured. To determine whether such an obligation exists in a particular case, three questions must be answered:[52]

1. What is the nature/extent of the relationship?
2. If there is a duty, to whom is it owed?
3. Who owes the duty?

Considering the nature of the close relationship with students, the teacher/coach establishes strong legal duty.[53]

For negligence to occur, one person had to take an unreasonable risk, causing injury to another. Should the problem occur, then legally four key questions have to be asked:

1. Did injury occur?
2. Was duty established?

---

[52]Strope, Jr., p. 43.

[53]Strope, Jr.

3. Was there a breach of duty on your part?

4. But, for the breach of duty, did the injury occur?

An answer to three out of four of the above questions in the affirmative can constitute a liability case, especially if the causal link between question three and question one can be established.

The hardest problem is identifying the nature and extent of the duty. Duty changes with the fact and circumstances.[54] Apparently the key often used judicially is to determine if the risks were foreseeable in a particular activity.

Several school activity situations led the courts to find educators with a legal duty:

> Walking Special Olympic team members (I.Q. of 52) from the school to a city gym three blocks away via a busy street.[55]
>
> Condoning off-campus initiation and hazing.[56]

---

[54]Strope, Jr.

[55]Foster v. Houston Gen. Ins. Co., 407 So.2d 759 (La. App. 1981).

[56]Rupp v. Bryand, 417 So.2d 658 (Fla. 1982).

> Installing a glass panel at the end of a basketball court.[57]

> Taking a six-year-old to the beach.[58]

Even when governmental immunity protects the school district and its employees from liability suit, greater awareness and planning might preclude both the injury and the bad relationship with the community. Governmental immunity does not preclude suit of an employee, and the question of whether breach of duty occurs is determined by the test of what a prudent or reasonable person might have done in similar circumstances.

Knowledge and strategic planning often can prevent a breach of duty when coaches and administrators act accordingly. Some cases where breach of duty was judicially proven could have been prevented with some knowledge and planning:

> The sixteen-year-old collapsed after a hard scrimmage and wind sprints. He displayed symptoms of heat stroke and exhaustion. The first aid treatment was inappropriate and the student was denied medical help for two hours. He died.[59]

---

[57]Thomas v. St. Mary's Roman Catholic Church, 283 N.W.2d 254 (S. Dak. 1944).

[58]Morris v. Douglas County Sch. Dist., 403 P.2d 775 (Oreg. 1965).

[59]De Gooyer v. Harkness, 13 N.W.2d 572 (Minn. 1978).

> Glass panels were built into the gymnasium wall within six feet of the basketball court endline. A student traveled through the glass, again.
>
> A traditional letterman's initiation was ordered off-campus, but both principal and coach knew it would continue. One boy was injured; one boy was killed.
>
> A school failed to provide helmets or faceguards for a powderpuff football game.[60]

Breach of duty is clearly demonstrated when the court is convinced that the risks were foreseeable and prudent action was not taken by the principal and/or coach to prevent the foreseeable situation. Obviously, some cooperative prior discussion, observation, planning and determination of appropriate action(s) could often prevent the breach of duty.

The athlete who is appropriately and consistently trained both physically and in the specific athletic skills necessary for the sport including all necessary safety equipment usage establishes a program clearly emphasizing conditioning, skills, and safety. With this apparent planning and conduct of program, the preponderance of such evidenct will often contradict accusation of a breach of duty should a student become injured. Strategic planning is often the key.

---

[60] Lynch v. Board of Educ., 412 N.E.2d 447 (Ill. 1980).

Proximate cause, or legal cause, is the relationship that must be found to exist between the behavior and the claimed injury to justify a finding of liability.[61] Proximate cause may also be defined as

> that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[62]

To argue against proximate cause there must be an alleged "intervening cause superseding the proximate cause alleged to create the injury."[63] If the intervening act was foreseeable, however, the breach of duty still stands.[64]

There are three legal defenses to a liability claim also available: contributory negligence, comparative negligence, and assumption of risk.[65]

Contributory negligence assumes that the complaining party did not act prudently, and the injury resulted due to not acting reasonably. Bright high school students, for

---

[61]Strope, Jr., p. 46.

[62]Black's Law Dictionary 1391 (4th Ed. 1968).

[63]Meyer v. Board of Educ., 86 A.2d 761, 765 (N.J. 1952).

[64]Strope, Jr., p. 47.

[65]Strope, Jr., p. 48.

example, are expected to conduct themselves as reasonable young adults, using prudent judgment in familiar situations for which they have skills or training to handle the situation. The younger the child, the less contributory negligence can be claimed.

In states that grant comparative judgment, the courts operate even more fairly by attributing a portion of the fault to each party, thereby assigning an equal portion of the costs of the injury.[66]

Similar to contributory negligence, assumption of the risk is a defense which requires a proof that the plaintiff knowingly and voluntarily accepted the dangers and risks involved in the activity.[67] The risks had to be spelled out by someone, like a coach, prior to the incident to assure that the student knew clearly the actual dangers. The student told not to touch a band saw until he has passed the written test, been checked out on safety procedures, and been properly trained for usage because he may sever finger, hand or arm is found to assume all risk when he ignores the directive and uses the saw.

---

[66]Strope, Jr., p. 49.

[67]Strope, Jr.

Participants in sporting events assume the normal risks of the sport, and especially when they have past experience in the sport.[68]

Spectators along the football field sidelines can expect to risk injury from players during play. The lack of seating or crowd control did not affect the outcomes.[69]

Though a complex issue, liability philosophy that governs the behavior of the administrator and coach is simplified. Key rules for this cooperative effort include foreseeing problems, establishing strategic plans/policies/procedures, documenting actions, publishing rules, inspecting buildings, warning students of dangerous risks, preventing occasions for injury, conducting oneself as a reasonable person, and planning special precautions for any new situations, especially if off-campus.

Not only special planning is necessary for off-campus travel, but students need to travel safely in a well-maintained vehicle.

---

[68]Albers v. Independent Sch. Dist. 487 P.2d 936 (Idaho 1971); Vendrell v. Sch. Dist., 376 P.2d 406 (Oreg. 1962); Rutter v. Northeastern Beaver County Sch. Dist., 423 A.2d 1035 (Pa. Super. 1980); Passantino v. Board of Educ., 363 N.E.2d 1373 (N.Y. 1977).

[69]Perry v. Seattle Sch. Dist., 405 P.2d 589 (Wash. 1965); Dadieux v. Board of Educ., 266 N.Y.2d 895 (App. Div. 1966).

Vehicle Usage and Maintenance

> A school district is made by statute for bodily injury and property damage resulting from the negligent operation, by any officer, agent or employee of the district, of a motor vehicle of which the district is the owner.[70]

Special caution is necessarily made here that injury due to vehicle maintenance creates a vulnerable condition for the school district. There is no governmental immunity for protection.[71]

Like all cases for liability, careful strategic planning is necessary to evidence careful vehicle maintenance on a regular basis.

The regular and heavy usage of school vehicles creates serious problems for conducting the regular inspection, maintenance work and reclining of vehicles.

Pertinent to the issue of vehicle safety could be the vehicle standards for purchase. Considering the regular, heavy usage of the vehicle, the vehicle should be equipped for heavy duty usage. Heavy duty shocks and heavy duty suspension are minor expectations for vehicle safety when transport of maximum passenger capacity and weight is

---

[70] MSA 3 996(105); MCL 691.1405.

[71] 22 MCO 165

involved. These vehicles are heavily used, overused and abused past their capacity and the vehicles should be selected and maintained accordingly.

Summary

The purpose of this chapter was to provide an understanding of the origin and background of liability to assist the comprehension of the present problems faced by both the administrator and coach. Extracurricular liability issues require a concentrated focus by school boards, administrators and coaches when addressing state association rules, administrative planning, vehicle usage and maintenance, medical care and planning, and annual policy revisions. Clear assessment of how the school administrator addresses these liability issues is of tantamount importance.

CHAPTER III

METHODOLOGY

Survey

This study determines by survey questionnaire how Michigan schools are currently incorporating liability concerns. The questionnaire assesses high school administrators' strategic planning of administrative policies governing extracurricular speech activities.

Survey Sample

The subjects are 100 Michigan high school principals of schools actively participating in the state speech association, the Michigan Interscholastic Forensic Association. The sample represents 50 percent of active speech programs and 18 percent of all Michigan school districts. The principals administrate schools in Michigan that are representational of various school sizes, geographical locations, and participation in school speech activities. The final subjects were 50 professional high school administrators who returned their surveys by mail.

The Survey Instrument

The survey questions were limited to ten major items covering six key liability issues. The issues reflect the input from three significant sources, as follows:

1. Studies conducted by Don Boileau, Ph.D., Director of Educational Research, Speech Communication Association; and

2. Issues and recommendations selected from NASSP monograph, School Activities and the Law, by John Strope, Jr.; and

3. Conference presentation by Don Boileau, Ph.D., C.M.U., and John Fitzgerald, Executive Director, Michigan Interscholastic Forensic Association (MIFA), to the 1978 fall conference of the Michigan Speech Association.

The major liability issue areas include the following:

1. compatibility of school policies with state association rules and regulations;

2. administrative policies;

3. coach supervision at variance;

4. vehicle usage and maintenance;

5. annual revision of liability policies;

6. medical care and planning.

Any instrument bias is affected by this writer's many years as a forensics director in Michigan.

The ten-item questionnaire was printed with the printed instructions for the subject to circle a yes or no response

for each question (see Appendix B). Though there was no space allocated for written responses, many administrators did write qualifications for certain answers that assisted accurate determination of intent.

Survey Distribution

The survey was mailed with cover letter (see Appendix A) to 100 Michigan high school principals with active speech programs. The responses were to remain anonymous to protect the frank integrity of the administrator, but the school class size was indicated. The cover letter informed the administrator that both the NASSP and this writer found liability to be a relevant issue.

The administrator was encouraged to incorporate the ten items of the survey into his annual administrative management by objectives.

The mailing to the 100 Michigan administrators was conducted in February and March, 1985. A stamped, self-addressed envelope accompanied the letter's encouragement to the administrator to send the survey by return mail.

The final survey sample consisted of 50 professional administrators who returned the survey questionnaire within 15 days of the initial mailing.

The results were to be tabulated to indicate the total positive or negative responses to each item and the responses were to be converted into correct percentages to be placed into the appropriate tables.

Summary

The study methodology included a ten-item liability survey questionnaire concentrating on six liability issues. The survey was mailed to 100 representational Michigan high school principals who supervise speech programs. About 50 professional administrators returned the survey and those tabulated results were used for this study's analysis.

CHAPTER IV

PRESENTATION OF DATA AND INTERPRETATION OF RESULTS

This study determines by survey questionnaire how Michigan schools are currently incorporating liability concerns. The questionnaire assesses high school administrators' strategic planning of administrative policies governing extracurricular speech activities.

A ten-item questionnaire was responded to by 50 professional high school administrators; the results are reported and interpreted here. A survey can reveal a needs assessment for addressing liability concerns within Michigan schools.

The survey results are reported within six major liability issue areas below. They are organized as follows: state associations, administrative policies, supervision at variance, vehicle usage and maintenance, liability dialogue, and medical care and planning. Results tables in each liability issue area found below provides a visual means to assess survey results. The results are both reported and interpreted within each issue area.

State Associations

State associations require support and school board adoption of rules and regulations to maximize the compatibility of liability protection through school procedures. The survey results in this area reveal the following: study of Table 1., Support of State Associations, reveals school administrators were unclear about the liability commitment made. Seventy-six percent of the administrators agreed that their schools' administrative policies/procedures complied with state association rules and sanctions, but only 52 percent of the administrators met with the forensics directors to discuss how written policies were compatible with the state association's. Only 26 percent of school boards adopted state association rules and regulations.

Table 1. Support of State Associations

Survey of Michigan School Administrators	Yes %	No %
School policies comply with state association rules?	76	24
Dialogue on compatibility of policies with state association rules?	34	66
School board adoption of state rules?	26	74

Note: N = 50

There is some discrepancy between 76 percent of the schools perceiving compliance with state association rules and sanctions, but only 52 percent of the administrators meeting with the forensics directors to discuss written policies governing speech activities. Administration support for state associations and trust of forensic directors is commendable, but once a year a meeting could be established for the administrator and the director to discuss policies. There is greater protection for the school, teacher/coach and student when state association rules and regulations are compatible with school rules and policies.

More importantly, the supervisory role of the coach and the expectations of the school administrator are more clearly and comprehensively established as a result of an annual revision. The coach is bound contractually to adhere to all state association rules when state rules are adopted by the school board; rules not adopted are not necessarily binding on the coach.

The school board should both adopt state rules and regulations and be sure school policies are compatible with the state association to assure that a clearcut policy covers student behavior. Failure to act may incur liability obligations.

Administrative Policies

Policies often require administrative revision and as assistance in the interpretation of those policies as they apply to extracurricular activities. In reporting the survey results reflected in Table 2., Administrative Policies in Extracurricular Activities, disciplinary policies exist for extracurricular activities in the following areas: 86 percent travel; 72 percent overnight stays; 78 percent after school rehearsals; 78 percent tournament attendance; 78 percent student suspension; 82 percent appeals procedure; 84 percent driver authorization; and 72 percent chaperones. Only 62 percent of the schools use the NASSP approved activities list for out-of-state activities. Not only is the coverage nonuniform and inconsistent, the coach cannot be assured to reach an administrator 64 percent of the time, and only 54 percent of the schools have a procedure for removing a miscreant student from the tournament site as a form of necessary discipline.

Clearly, administrators have established policies governing student behavior both on-site and off-campus, but the approach fails to demonstrate any uniform consistency of coverage or a uniform identification of liability issues. Only 64 percent of the schools have a planned procedure for

being sure an administrator can be contacted when needed by the coach. When policies are not comprehensive, then administrative backup should be a greater priority. The administrator may also be necessary for removing and transporting a student with disciplinary problems from the tournament site to home base.

Table 2. Administrative Policies in Extracurricular Activities

Survey of Michigan School Administrators	Yes %	No %
Do written disciplinary policies include:		
a. Traveling?	86	14
b. Overnight stays?	72	28
c. After school practices (off-site)?	78	22
d. Tournament attendance?	78	22
e. Student suspension?	78	22
f. Appeals procedures?	82	18
g. Driver authorization policy?	84	16
h. Chaperones?	72	28
For out-of-state activities, do you use the NASSP approved activities list?	62	38

Note: N = 50

Clearly, administrative strategic liability planning to address the specific conditions unique to extracurricular activities must be comprehensive and created collabortively with the forensic coach. Statewide consistency would also be beneficial for all administrators facing this common problem. Without comprehensive administrative policies strategically planned, the situation faced by the coach is fraught with liability issues.

Supervision at Variance

Comprehensive supervisory planning is required for clearcut, strategically designed school policies that clearly address liability issues and protect both the administrator and the coach. As reported in Table 3., Supervision at Variance, only 12 percent of the school policies/procedures included notification to the parent that student supervision was at variance; this crucial liability issue is essentially ignored, and opens both the school administrator and coach to serious litigation.

Parents and students must be fully informed regarding expectations. The NASSP recommends that policies are to be publicized within the educational community; all schools will need to publish, post and have parents sign policy contracts.

Table 3. Supervision at Variance

Survey of Michigan School Administrators	Yes %	No %
Are parents notified that supervision is at variance?	12	88
Administrator meets with forensics director to discuss written policies?	52	48
Discuss how written policies are compatible with state association rules?	54	46

Note: n = 50

Telling parents that supervision is at variance is a crucial liability policy act. Once the problem has occurred, the damage to the community is irreparable for the credibility of all extracurricular coaches and programs. Whether addressed as liability or good public relations, parents and administrators familiar with supervision at variance will have accurate expectations for the operation of the activity. Present confusion may also suggest that administrative assumptions about coach supervision of students are erroneous; more dialogue is advisable. School administrator expectations about the supervisory accountability of the coach would be more accurate if each administrator recognizes that the coach is judging or working in other rooms or

BEST COPY AVAILABLE

buildings while the competition is being conducted; annual meetings with the administrator would increase the dialogue.

Apparently school supervision of extracurricular activities is often at variance; responsible notification of parents at the beginning of the season should demonstrate greater planning and awareness. More importantly, notification reduces the liability for the coach (who is, in fact, one who will be sued).

Vehicle Usage and Maintenance

Surprisingly, the property right for safe vehicles is not strongly addressed in an administrative manner. According to survey results, less than half the schools using school vehicles have established a clearcut, regular maintenance policy for the vehicles used. As reported in Table 4., Vehicle Usage and Maintenance, the schools used vehicles other than buses for travel (84 percent) but less than half (46 percent) had a clear maintenance policy for those vehicles.

Usage of vehicles other than buses are made by over 84 percent of the schools, and apparently all 84 percent of those schools have clear driver authorization policies. (Not surveyed in this study is the determination of whether

the vehicle logs are fulfilling the insurance policy requirements for coverage.)

Table 4. Vehicle Usage and Maintenance

Survey of Michigan School Administrators	Yes %	No %
School uses vehicles other than buses?	84	16
Regular maintenance/inspection policy?	46	54

Note: N = 50

Since vehicles are often used at least six days a week for a large portion of the day, vehicle inspection may be difficult to perform without carefully scheduled policy and procedures. Simple reliance upon driver reports are unreliable and unsatisfactory; a trained mechanic is necessary.

Since vehicle maintenance is a property right issue, the school district should be interested in immediate adoption of remedies.

The maintenance policy should include consideration for the stress placed on the vehicle by filling it with students and baggage. Purchase and maintenance of a school vehicle with heavy duty suspension, heavy duty shock absorbers, larger tires and other heavy duty provisions

ordered at the factory more readily assure student safety on the open road. Maintenance policies for vehicles not intended for heavy transport may only partially assume liability responsibility.

A problem schools face is a regular, scheduled vehicle inspection and maintenance policy. That is not the responsibility of the principal; the school board and superintendent are responsible for the policy. The school district is vulnerable for property right liability suits, with no governmental immunity. With genuine concern by school boards, maybe students and coaches will travel more safely.

Liability Addressed

Clear strategic planning of policies and procedures establish the best parental supervision and protection of students. The survey results, as clearly indicated in Table 5., Administrators Discussing Liability, indicate administrators do not openly discuss liability issues with forensics directors. Only 52 percent of the administrators discuss policies with forensic directors; 58 percent discuss the compatibility of policies with liability laws and liability insurance coverage. Only 64 percent of the schools have a policy for contacting administrators after

hours, and only 54 percent of the schools have policies for picking up the student offender from the tournament site. Administrative policies cannot be considered common knowledge for parents, students and staff, since only 46 percent of the policies are written, posted and distributed. Only 12 percent of the parents are told that supervision is at variance, though this is a crucial liability issue in every court case. Over 62 percent of the schools use NASSP approval for out-of-state activities.

Discussing the liability issue dispels coach fears, educates both parties, and provides protection. Knowledge of insurance coverage and state laws are also helpful.

Even the best planning will not effectively provide information to coaches on nights and weekends when problems occur; administrators should be on call with posted numbers. Both liability and public relations require appropriate administrative handling of situations as they occur. Administrators can have a list of all parents and phone numbers to alert parents when incidents occur. Student accidents, disciplinary problems, vehicle breakdowns and other emergencies require prompt and effective attention.

Another issue rarely discussed is the liability insurance coverage provided the school, the principal and the

teacher/coach involved. As part of the coach's contract, the school should provide insurance coverage (at about $75 cost).

Table 5. Administrators Discussing Liability

Survey of Michigan School Administrators	Yes %	No %
Policy to contact school administrators nights and weekends?	64	36
Policy for removal of student offender from tournament site?	54	46
Policy meeting with forensics director?	52	48
Dialogue on policy compatibility with state association?	54	46
Dialogue on policy compatibility with liability laws and liability insurance?	58	42
Policy for written, posted and distributed policies with parental consent forms?	46	54
Policy to use NASSP approved activities list for out-of-state activities?	62	38
Policy to notify parents that supervision is at variance?	12	88

Note: N = 50

Unfortunately, less than half of the administrators meet with the forensic directors for clear discussion of policies and liability issues. A more cooperative

strategic planning between administrator and extracurricular activity coach would assure that liability concerns are addressed. Tort liability can be more effectively addressed by writing, posting and distributing school policies to parents, students and staff with some assurance that common, consistently addressed issues are covered in the schools' policies and procedures. Parents left ignorant can be resentful; it's the coach who will be sued.

Medical Care and Planning

The NASSP urges use of foresight regarding injuries and taking precautions for off-campus activities. One liability implication being dealt with by some Michigan schools is medical care planning for off-site emergencies. As reflected in the survey results, as indicated in Table 6., Medical Care and Planning, only half of the Michigan schools recognize that medical policies and procedures for the off-site medical emergencies are a necessary part of written and distributed school policies. Only half of the schools collect relevant medical care information or have a guardian approval form permitting the coach to admit the student to an emergency room.

Table 6. Medical Care and Planning

Survey of Michigan School Administrators	Yes %	No %
Administrator meets with forensics Director to discuss policy?	52	48
Written policy adopted for handling medical emergencies off-site, including:		
a. Medical information form?	54	46
b. Medical permit form for Emergency Care admittance?	46	54
c. Medical emergency policy parent approval form (signed)?	64	36

Note: N = 50

Only half of the Michigan schools recognize that medical policies and procedures are a necessary part of off-site student policies governing the extracurricular activities.

The coach is the one out there when the medical problems occur; the coach will be standing in the emergency room trying to admit a seriously ill student.

When a student has become ill enough to warrant entry into a hospital emergency room 90 miles from home, that may not be the time to try to hunt for parents for many hours by phone. What is more frustrating is often the student

knows why medical aid is necessary and what is required, but admittance requires parental approval.

The student or coach who carries all pertinent medical information is prepared, including the following: a permit form for emergency room admittance signed by a parent, a medical insurance policy number, name and numbers for family doctor/clinic and information on current medications and allergies. "In loco parentis" moves with the coach and students, and on-site administrative preparation/records must be in the hands of the coach and/or student when traveling.

Significantly, about one-half of the schools surveyed are already within the framework of compliance with these strategic medical care plans but 50 percent compliance does not adequately protect students and coaches.

Clearly, schools do not effectively administrate medical information, medical emergency admitting, and written medical policies for the extracurricular student, especially if the student is off-site.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

The purpose of the study was to determine the high school principals' strategic planning for handling extracurricular liability issues, both on campus and off-site. Strategic liability planning includes revision of school policies, procedures and liability concerns with joint cooperation of forensic directors who supervise extracurricular speech activities.

Strategic liability planning must determine how extracurricular school policies are incorporated into many key liability areas.

A survey was mailed to Michigan high school administrators to determine how liability issues are addressed. About 50 administrators responded, and their results were analyzed and interpreted.

Conclusions

A specific conclusion was drawn for each of the six key liability issue areas studied. First of all, the school board should both adopt state association rules and regulations and be sure school policies are compatible with the

state association to assure that a clearcut policy amply supervises student behavior; policies for clear supervision and behavior expectations reduce liability concerns.

Secondly, administrative liability planning needs to be comprehensive, consistent, and strategically planned as an annual collaborative effort by both the administrator and coach.

A third conclusion recognizes that most supervision by the coach is supervision at variance. Parents must be notified that supervision is at variance and administrators must include this knowledge in the strategic liability planning being conducted annually for extracurricular activities.

Another conclusion reached is that administrators need to discuss annually with the forensics director how administrative policies, supervision, vehicle usage, medical planning and other issues are interrelated to liability concerns for the purpose of strategic planning of policies.

The conclusion drawn from medical care and planning is that many schools address the issue, but the medical care and planning must be comprehensive, including enabling the coach to admit the off-site student into an emergency room.

Recommendations

1. Coaches should request, in writing, administrative leadership in addressing the liability concerns included in this study. The letter should state that until a response is received, the coach presumes all compliance with these matters. Keep a copy of the letter.

2. School boards should create a clear policy for both vehicle inspection and maintenance. School district purchase of vehicles should be for heavy-duty school usage.

3. State leadership from the Michigan Association of School Boards and the Michigan Association of Secondary School Principals should encourage consistent, comprehensive, statewide prototype policies addressing these liability concerns.

SELECTED REFERENCES

Albach v. Odle, 531 F.2d 983 (10th Cir. 1976).

Albers v. Independent Sch. Dist., 487 P.2d 936 (Idaho 1971).

Baltic Indep. Sch. Dist. v. South Dakota High Sch. Act. Ass'n., 362 F. Supp. 780 (D. S. Dak. 1973).

Beard v. Board of Educ., 16 p.2d 900 (Utah 1932).

Biddle v. Mazzacco, 324 P.2d 364, 366 (Alaska 1955).

Black's Law Dictionary 1391 (4th ed. 1968).

Braesch v. De Pasquala, 265 N.W.2d 842 (Nebr. 1978).

Buhlman v. Board of Educ., 436 N.Y. S.2d 192 (Sup. Ct. 1981).

Cape v. Tennessee Sec. Sch. Ath. Assn'n, 424 F. Supp. 732 (E.D. Tenn. 1976).

Contra Duffley v. New Hampshire Interscholastic Ath. Ass'n., 446 A. 2d 462 (N.H. 1982).

Cordova v. Chonka, 315 F. Supp. 953 (N.D. Ohio 1970).

Dadieux v. Board of Educ., 266 N.Y.2d 895 (App. Div. 1966).

Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972).

De Gooyer v. Harkness, 13 N.W.2d 572 (Minn. 1978).

Detroit News, 1/23/85, p. 3-A.

Dunham v. Pulsifer, 312 F. Supp. 411 (D. Vt. 1970).

Ector County Indep. Sch. Dist. v. Hopkins, 518 S.W.2d 576 (Tex. Civ. App. 1974).

Epperson v. Arkansas, 393 U.S. 97 (1978).

Fenton v. Stear, 423 F. Supp. 767 (W.D. Pa. 1976).

Foster v. Houston Gen. Ins. Co., 407 Sp.2d. 759 (La. App. 1981).

French v. Cornwell, 276 N.W.2d 216 (Nebr. 1979).

Grames v. King, 123 Mich. App. 573 (1983).

Kernstein v. Pewaukee Sch. Bd., 557 F. Supp. 565 (E.D. Wis. 1983).

Lynch v. Board of Educ., 412 N.E.2d 447 (Ill. 1980).

Meyer v. Board of Educ., 86 A.2d 761, 765 (N.J. 1952).

Mogabab v. Orleans Parish Sch. Bd., 239 So.2d 456 (La. App. 1970).

Morris v. Douglas County Sch. Dist., 403 P.2d 775 (Oreg. 1965).

Morrison v. Roberts, 82 P.2d 1023 (Okla. 1938).

Nolte, Chester M. "Judicial Intervention in School Athletics: The Changing Scehe," 8 ELR 1983, p. 9.

Oklahoma High Sch. Ath. Ass'n. v. Bray, 321 F.2d 269 (10th Cir. 1963).

Palsgraf v. Long Island R.R. Co., 162 N.E. 99 (Ct. of App. of N.Y. 1928).

Passantino v. Board of Educ., 363 N.E.2d 1373 (N.Y. 1977).

Passel v. Fort Worth Indep. Sch. Dist., 453 S.W.2d 888, 892 (Tex. Civ. App. 1970).

Perry v. Seattle Sch. Dist., 405 P.2d 589 (Wash. 1965).

Robinson, Lee C. "A Community Survey of the Commission on Excellence Report 'A Nation At Risk,'" published Ed.S. Field Study, Mt. Pleasant: Central Michigan University, 1984.

Rupp v. Bryant, 417 So.2d 658 (Fla. 1982).

Rutter v. Northeastern Beaver County Sch. Dist., 423 A.2d 1035 (Pa. Super. 1980).

Spain v. Louisiana High Sch. Ath. Ass'n., 398 So.2d 1336 (La. 1981).

Strope, John L., Jr. "Forward by Ivan Gluckman," SCHOOL ACTIVITIES AND THE LAW. Reston, Va.: NASSP, 1984.

Thomas v. St. Mary's Roman Catholic Church, 283 N.W.2d. 254 (S. Dak. 1979).

Tomas v. St. Mary's Roman Catholic Church, 283 N.W.2d 254 (S. Dak. 1979).

Vendrell v. Sch. Dist., 376 P.2d 406 (Oreg. 1962).

Warren v. National Ass'n. of Secondary Sch. Principals, 375 F. Supp. 1043 (N.D. Tex. 1974).

Williamson v. Board of Educ., 375 N.Y. S.2d 221 (App. Div. 1975).

Wood v. Strickland, 420 U.S. 308 (1975).

Zeller v. Donegal Sch. Dist., 517 F2d 600 (3rd Cir. 1975).

APPENDIX A

Letter

1113 Harold Avenue
Mt. Pleasant, MI 48858
15 February 1985

RE: LIABILITY SURVEY

Dear professional colleague:

The NASSP published SCHOOL ACTIVITIES AND THE LAW addresses the heavy responsibilities and potential liabilities faced in conducting extracurricular activities. Having coached speech activities since 1968, I have share those administrative concerns daily. With the assistance of my advisor, Dr. Robert Mills, I have decided to address some of the concerns in a survey.

Your help is needed to assist me with this preliminary survey. I will use the results to both complete my field study and to construct a statewide survey on this issue next fall. You should find the survey items clearly reflect the new NASSP stated concerns.

Since we know how strategic planning often assists decision making when problems occur, I urge you to include the survey items in your annual professional goals and in your planning with your forensics director and other speech coaches/ advisors, including debate, individual speaking events, one-act plays, discussion, student congress and drama.

Would you please sit down right now and complete the attached ten question survey by simply checking yes or no. Then slip the survey into the stamped, self-addressed envelope and send by return mail.

Your professional assistance is greatly appreciated. Should you wish to enclose comments that would improve the survey, please enter them on the back.

Sincerely yours,

Richard Bowen

APPENDIX B

TEN QUESTION LIABILITY SURVEY OF MICHIGAN SCHOOL ADMINISTRATORS

Position of person completing this survey (if not high school principal): _____

School size (h.s.): ____ Class A B C D (circle one)

Number of coaches/advisors conducting speech events: _____

PLEASE CIRCLE A YES OR NO RESPONSE FOR EACH SURVEY ITEM.

1. Do you meet with the director of forensics to discuss how school board and building policies are compatible with the following:

YES NO a. state speech organization rules governing these activities, e.g., Michigan Interscholastic Forensic Association?

YES NO b. coach-written policies governing behavior expectations during the conduct of extracurricular activities?

YES NO c. liability laws and district liability insurance policies?

YES NO 2. Does your school carry NASSP liability insurance?

3. Do the combined policies cited in #1 above include disciplinary policies/procedures governing student behavior for the following:

YES NO a. while traveling

YES NO a. medical information form reflecting medical history, physician information, parent contact numbers, weekend contact numbers, medical insurance policy number?

YES NO b. medical permit form for admittance of student to emergency medical center (signed by legal guardian)?

YES NO c. medical emergency policy that is signed by parents and kept on file.

YES NO 7. Are all policies/procedures written, posted, and distributed to parents with parental consent forms signed and on file?

YES NO 8. Do you use the NASSP approved activities list for determining your school's participation in out-of-state activities?

YES NO 9. Does your school board adopt the state speech association rules and regulations (i.e., the Michigan Interscholastic Forensic Association)?

10. Please circle the beginning number or letter to any question above that you do not find a relevant issue to consider for administering an extra curricular speech activities program?

Please write down any other concerns regarding liability as well as other comments that will make this statewide survey more informative to you.

Place this survey into the enclosed, self-addressed stamped envelope and mail it today.

THANKS FOR YOUR HELP!